

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

-----X
JEFF SCHMIDT,

Plaintiff,

-against-

AMERICAN INSTITUTE OF PHYSICS,

Defendant.

-----X
Civil Action No.: 1:03CV01691

**DEFENDANT'S MOTION TO TRANSFER VENUE FROM THE UNITED STATES
DISTRICT COURT, DISTRICT OF COLUMBIA TO THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF MARYLAND, SOUTHERN DIVISION**

Defendant American Institute of Physics ("AIP") hereby respectfully moves to transfer venue in this case from the United States District Court for the District of Columbia to the United States District Court for the District of Maryland, Southern Division ("District of Maryland"). As set forth more fully in the attached Memorandum of Law, the convenience of the parties and the witnesses, and the interests of justice, support transfer of venue from this Court to the District of Maryland. The operative events of the instant litigation arose in Maryland. Substantially all of the witnesses, and all relevant documents are located in Maryland. Defendant resides in Maryland. Moreover, the common law claims asserted in Plaintiff's Complaint will be adjudicated pursuant to Maryland law.

Defendant's counsel sent two electronic mail communications to pro se Plaintiff Jeff Schmidt inquiring whether he would consent to this Motion. Mr. Schmidt received and responded to them; however, he did not indicate whether or not he would consent. AIP requests oral argument in connection with this Motion. A proposed order is provided herewith.

**DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO
TRANSFER VENUE FROM THE UNITED STATES DISTRICT COURT, DISTRICT OF
COLUMBIA TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
MARYLAND, SOUTHERN DIVISION**

PRELIMINARY STATEMENT

Defendant American Institute of Physics ("AIP") submits this Memorandum of Law in support of its motion to transfer venue from the United States District Court, District of Columbia to the United States District Court for the District of Maryland, Southern Division ("District of Maryland"). As set forth more fully below, the convenience of the parties and the witnesses, and the interests of justice, support transfer of venue from this Court to the District of Maryland. The operative events of the instant litigation arose in Maryland. Substantially all of the witnesses, and all relevant documents are located in Maryland. Defendant resides in Maryland. Moreover, the common law claims asserted in Plaintiff's Complaint will be adjudicated pursuant to Maryland law.

FACTS

A. Overview of the Parties

1. AIP is a Publisher of Physics Publications

Defendant American Institute of Physics is a not-for-profit membership corporation, chartered in 1931, for the purpose of promoting advancement of knowledge of physics. (Affidavit of Theresa Braun at ¶5, filed herewith, affirmed on the 20th day of October, 2003, hereinafter referred to as the "Braun Affidavit"). Its members are comprised of leading societies in the fields of physics and related sciences. AIP publishes scientific journals, including the magazine *Physics Today*. Its main offices are located in College Park, Maryland. (Braun Affidavit at ¶7).

2. Plaintiff Was Employed by AIP at its College Park Headquarters

Plaintiff commenced employment with AIP at its College Park, Maryland location in or about March 1981. Plaintiff's Complaint at ¶5. Plaintiff worked for *Physics Today* as an Associate Editor, then as a Senior Associate Editor. (Braun Affidavit at ¶8). Plaintiff worked at AIP's campus in College Park, Maryland from October 1993 to the time he was discharged¹ (Braun Affidavit at ¶9). AIP terminated Plaintiff's at-will employment on June 2, 2000. (Braun Affidavit at ¶8).

B. Plaintiff's Complaint

1. District of Columbia Court Filing

On July 22, 2003, Plaintiff served Defendant with a Summons and Complaint, which was filed on or about May 30, 2003 in the Superior Court of the District of Columbia, Civil Division. Among the causes of action asserted in Plaintiff's Complaint is a claim under 42 U.S.C. §1983. See Plaintiff's Complaint. Accordingly, on August 8, 2003, Defendant properly removed this action to the United States District Court of the District of Columbia pursuant to 28 U.S.C. §1441. Defendant served its Answer to Plaintiff's Complaint on August 8, 2003. Defendant served an Amended Answer on August 27, 2003. Defendant denies that Plaintiff's claims have any merit.

2. Plaintiff's Wrongful Discharge Claims Relate to Conduct That Plaintiff Purportedly Received at Defendant's College Park Offices

All of the claims in Plaintiff's Complaint arise out of his employment with, and discharge by, Defendant AIP at its College Park offices. In his Complaint, Plaintiff asserts that by discharging him, AIP allegedly 1) breached written and oral contracts of employment;

¹ Defendant maintains a small office in Washington D.C. Plaintiff never was assigned to work at AIP's Washington D.C. office. (Braun Affidavit at ¶11).

2) violated 42 U.S.C. §1983; 3) breached covenants of good faith and fair dealing; 4) violated his due process; and, 5) intentionally inflicted emotional distress.

3. The Witnesses and Documents Referred to by Plaintiff are Located in Maryland

All of these alleged “events” occurred in College Park, Maryland where Plaintiff was employed by Defendant. All potential witnesses to Plaintiff’s claims (i.e., those individuals who made decisions regarding Plaintiff’s employment with, and discharge from, AIP) were employed at AIP’s College Park, Maryland offices. (Braun Affidavit at ¶¶10, 19). Further, all records and documents pertaining to Plaintiff’s employment with AIP are located at AIP’s College Park, Maryland headquarters. (Braun Affidavit at ¶20).

ARGUMENT

THIS MATTER SHOULD BE TRANSFERRED TO THE DISTRICT OF MARYLAND FOR THE CONVENIENCE OF THE PARTIES AND WITNESSES, AND IN THE INTERESTS OF JUSTICE

This matter should be transferred pursuant to 28 U.S.C. § 1404(a), which provides that a District Court may transfer a civil action to another district where it might have been brought “for the convenience of parties and witnesses, in the interest of justice.” Section §1404(a) vests “discretion in the district court to adjudicate motions to transfer according to individualized, case-by-case consideration of convenience and fairness.” Kafack v. Primerica Life Insurance Co., 934 F. Supp. 3, 5 (D.D.C. 1996)(internal citations omitted). In analyzing whether to exercise its discretion to transfer venue, a district court examines whether 1) the action might originally have been brought in the district to where transfer is sought; and, 2) the interests of the parties, the witnesses and justice support venue transfer. Id. at 5-6.

Here, as set forth below, the interests of justice and the convenience of the parties and the witnesses support a transfer of venue to the District of Maryland: all of the operative events of the instant litigation arose in Maryland; substantially all of the witnesses are located in Maryland; the relevant documents are located in Maryland; and, the non-federal law claims asserted in Plaintiff's Complaint will be adjudicated pursuant to Maryland law.

A. The Action "Might Have Been Originally Brought" in the District Court of Maryland

The threshold issue of "whether the action might originally have been brought" in the transferee court is satisfied if that Court has jurisdiction over the subject matter of the action and venue is proper. Kafack, 934 F. Supp. at 5. Here, the District Court of Maryland has subject matter jurisdiction over Plaintiff's Complaint. It also is the proper venue in which to adjudicate Plaintiff's claims.

1. The District of Maryland Has Original Jurisdiction Over This Matter

In the instant matter, Plaintiff raised a federal claim in his Complaint (i.e., a claim under 42 U.S.C. §1983). Accordingly, the District of Maryland has original jurisdiction over Plaintiff's Complaint pursuant to 28 U.S.C. §1331. In addition, the District of Maryland has original jurisdiction in this action under 28 U.S.C. §1332 because there is complete diversity between the parties and the amount in controversy exceeds \$75,000.²

2. Venue is Proper in the District of Maryland

The statute governing venue in federal courts does not allow venue to be based on a plaintiff's residence. Rather, 28 U.S.C. §1391(b)(1)(2) provides in pertinent part, that " [a] civil action wherein jurisdiction is not founded solely on diversity of citizenship may ... be

² Diversity is established by Plaintiff's own allegation, to wit, Plaintiff alleges in the Complaint that he is a citizen of the District of Columbia. Plaintiff's Complaint at ¶2. Defendant AIP is a citizen of Maryland, as it is incorporated in New York and its principal place of business is located in College Park, Maryland. (Braun Affidavit at ¶7). Plaintiff's Complaint seeks \$4,000,000 in damages. See Plaintiff's Complaint.

brought only in (1) a judicial district wherein any defendant resides ..., or (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred...".

As set forth above, federal court subject matter jurisdiction herein is not founded solely on diversity. Accordingly, under 28 U.S.C. §1331(b)(1)(2), this action could have been brought solely in a judicial district where AIP resides, or in which a substantial part of the events giving rise to Plaintiff's claims occurred. AIP resides in College Park, Maryland (which is located within the judicial District of Maryland, Southern Division). Further, all of the events giving rise to the Plaintiff's claims arose within the District of Maryland.³

In sum, this action properly "might have been brought" in the District of Maryland.

B. Transfer of Venue is Appropriate Based on the "Private Interests" of the Parties and the "Public Interests" of the Court

In considering whether a transfer of venue is appropriate, courts weigh a variety of factors. Among these factors are "private interest" considerations such as 1) Plaintiff's choice of forum, unless the balance of convenience is strongly in favor of Defendant; 2) Defendant's choice of forum; 3) whether the claim arose elsewhere; 4) the convenience of the parties; 5) the convenience of the witnesses; and, 6) the ease of access to sources of proof. See, e.g., Trout Unlimited v. U.S. Dept. of Agriculture, 944 F. Supp. 13, 16 (D.D.C. 1996).

³ The fact that Defendant removed this matter from D.C. Superior Court to the United States District Court, District of Columbia does not preclude a subsequent request to transfer venue. Indeed, it is well settled that "[t]he fact that [Defendant] removed the case from state court does not bar [Defendant] from seeking to have this case transferred to another district. Once the action has been removed to federal court, it should proceed as if it had been brought in federal court originally." Piekarski v. Home Owners Sav. Bank, 743 F.Supp. 38, 42 (D.D.C. 1990). Under 28 U.S.C. 1441, Defendant did not have the option of removing this matter from D.C. Superior Court to the District of Maryland. Its only option was to remove the matter to the United States District Court for the District of Columbia – "the district court . . . for the district and division embracing the place where 'plaintiff's complaint was pending'". See 28 U.S.C. §1441(a).

Courts also examine “public interest” factors, such as 1) the transferee court’s familiarity with the governing laws; 2) the relative congestion of the calendars of the potential transferee and transferor courts; and 3) the local interest in deciding local controversies at home. Id. Here, both the “public” and “private” interests weigh in favor of a transfer of venue.

1. **The “Private Interests” Overwhelmingly Weigh in Favor of Transferring This Case to the District of Maryland**

Plaintiff’s choice of forum (the District of Columbia) has no meaningful ties to the controversy and no particular interest in the parties or subject matter.⁴ All of the events giving rise to this litigation occurred in College Park, Maryland. None occurred in the District of Columbia. Significantly, if Plaintiff originally had filed this action in the United States District Court, District of Columbia, venue would have been improper. As set forth above, residence of a plaintiff is not a proper basis for venue. See Section A(2), supra.

Unlike the District of Columbia, Maryland has direct and substantial connection to the subject matter of this action. Defendant is located in College Park, Maryland; Plaintiff worked at AIP’s College Park offices throughout much of his employment with AIP (and for the seven years prior to his discharge).⁵ All of the material events alleged in Plaintiff’s Complaint occurred in Maryland. All of the documents pertaining to Plaintiff’s employment with Defendant (and, thus, the subject matter of his instant claims) are located in Maryland.

All of Defendant’s potential witnesses (and presumably Plaintiff’s as well) with the exception of Plaintiff, are located in College Park, Maryland. Moreover, since he worked at

⁴ Further demonstrating the lack of nexus between the District of Columbia and Plaintiff’s instant claims, Plaintiff filed an administrative complaint of retaliation against AIP after his discharge with Maryland’s Prince George County Commission on Human Relations. (Braun Affidavit at ¶13). He never has filed a charge or complaint against AIP (of which AIP is aware) with any administrative agency located in the District of Columbia. (Braun Affidavit at ¶14).

⁵ Defendant moved its headquarters from New York to Maryland in 1993. Prior to 1993, Plaintiff worked for AIP at its New York, New York location.

Defendant's College Park headquarters, Plaintiff will not be unduly inconvenienced by having the instant action heard in Maryland. The District Court of Maryland, Southern Division is less than a one hour drive from this District of Columbia Court.⁶

In sum, the convenience of the parties and the witnesses undeniably support a transfer of venue. See, e.g., Trout, 944 F. Supp. 13 at 17 (internal citations omitted)(granting venue transfer from D.C. to Virginia, despite fact that plaintiff was a resident of the District of Columbia, because all of the events were "inextricably linked to the state of Virginia"); Katack, 934 F. Supp. 3 (transfer from D.C. to Maryland appropriate because operative events occurred in Maryland).

2. The "Public Interest" Supports Transfer to the District Court of Maryland

(a) Maryland Law Governs Plaintiff's Common Law Claims

Transfer of this case to Maryland favors the public interest and interests of justice because "[t]he interests of justice are best served by having a case decided by the federal court in the state whose laws govern the interest at stake." Kafack, 934 F. Supp. 3 at 8. "Under the District of Columbia's choice of law rules, the law governing the plaintiff's claims is the law of the state with the most significant relationship to the matters at issue." Id.

Here, Maryland has the most "significant relationship" to Plaintiff's common law claims. Plaintiff's contract and tort law claims (however meritless they may be) arose out of his employment with AIP in College Park, Maryland. None of the alleged improper actions occurred in the District of Columbia. Accordingly, under choice of law rules, Maryland law will govern Plaintiff's claims.

⁶ It is AIP's understanding that Plaintiff commuted from D.C. to AIP's offices while he was employed by Defendant. (Braun Affidavit at ¶12).

(b) Transfer Will Not Create Any Delays or Prejudice in this Matter

Discovery in this matter is just commencing. The Court has neither issued a discovery schedule nor held any conferences. Consequently, transfer of venue at this early stage would not create any excessive delay or prejudice to Plaintiff. See id. at 9.

In sum, because controversies should be resolved in the locale where they arise, it is respectfully submitted that this Court should transfer venue to the District of Maryland in accordance with the "more compelling interest of the State of Maryland in having localized controversy decided at home." Kafack, 934 F. Supp. 3 at 9.

CONCLUSION

For the reasons set forth above, Defendant respectfully requests that an order be entered transferring this case to the United States District Court for the District of Maryland, Southern Division, and award it such other and further relief as the Court deems just and proper.

Dated: October 22, 2003

JACKSON LEWIS LLP
ATTORNEYS FOR DEFENDANT
8614 Westwood Center Drive, Suite 950
Vienna, Virginia 22182
(703) 821-2189
(703) 821-2267 *facsimile*

By:


Teresa Burke Wright, Esq. (DC Bar No. 429196)

CERTIFICATE OF SERVICE

I hereby certify that, on this 22nd day of October, 2003, I caused a true and correct copy of the foregoing Defendant's Motion and Memorandum of Law in Support of its Motion to Transfer Venue from the United States District Court, District of Columbia to the United States District Court for the District of Maryland, Southern Division to be served, via First-Class Mail, by depositing said copy into an official U.S. Postal Service depository addressed as follows:

JEFF SCHMIDT
PLAINTIFF PRO SE
3003 Van Ness Street, NW #W406
Washington, DC 20008



Teresa Burke Wright, Esq. (DC Bar No. 429196)

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

-----X
JEFF SCHMIDT,

Plaintiff,

-against-

AMERICAN INSTITUTE OF PHYSICS,

Defendant.

Civil Action No.: 1:03CV01691

-----X

**ORDER GRANTING DEFENDANT'S MOTION TO TRANSFER VENUE FROM THE
UNITED STATES DISTRICT COURT, DISTRICT OF COLUMBIA TO THE UNITED
STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, SOUTHERN
DIVISION**

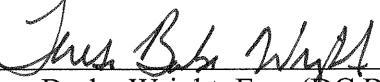
Having considered the Motion of Defendant American Institute of Physics ("AIP") to transfer this case from the United States District Court for the District of Columbia to the United States District Court for the District of Maryland, Southern Division, and any opposition thereto, and any replies, and finding good cause therefor, IT IS HEREBY ORDERED that the Motion is Granted. The clerk is hereby directed to transfer this case to the United States District Court for the District of Maryland.

Dated: October ___, 2003

The Honorable Ricardo M. Urbina
United States District Court
for the District of Columbia

Submitted by:

JACKSON LEWIS LLP
ATTORNEYS FOR DEFENDANT
8614 Westwood Center Drive, Suite 950
Vienna, Virginia 22182
(703) 821-2189
(703) 821-2267 *facsimile*



Teresa Burke Wright, Esq. (DC Bar No. 429196)

Serve with copies:

Teresa Burke Wright
Jackson Lewis LLP
8614 Westwood Center Drive
Suite 950
Vienna, Virginia 22182

Jeff Schmidt
3003 Van Ness Street, NW #W406
Washington, DC 20008

CERTIFICATE OF SERVICE

I hereby certify that, on this 22nd day of October, 2003, I caused a true and correct copy of the foregoing Proposed Order to be served, via First-Class Mail, by depositing said copy into an official U.S. Postal Service depository addressed as follows:

JEFF SCHMIDT
PLAINTIFF PRO SE
3003 Van Ness Street, NW #W406
Washington, DC 20008



Teresa Burke Wright, Esq. (DC Bar No. 429196)

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

JACKSON LEWIS LLP
ATTORNEYS FOR DEFENDANT
8614 Westwood Center Drive, Suite 950
Vienna, Virginia 22182
(703) 821-2189

ATTORNEY OF RECORD:

WENDY J. MELLK, ESQ. (*pro hac vice* admission to be made)
TERESA BURKE WRIGHT, ESQ. (DC Bar No. 429196)

JEFF SCHMIDT,

Plaintiff,

-against-

Civil Action No.: 1:03cv01691

AMERICAN INSTITUTE OF PHYSICS,

Defendant.

AFFIDAVIT OF THERESA BRAUN

STATE OF MARYLAND)
)ss.:
COUNTY OF PRINCE GEORGE'S)

Theresa Braun, being duly sworn, deposes and says:

1. I am not a party to the above-captioned action. I make the statements herein based upon my own personal knowledge, except such matters as are alleged on information and belief, and as to those matters, I believe them to be true.

2. I submit this Affidavit in support of Defendant American Institute of Physics' ("AIP") Motion to Transfer Venue from the United States District Court, District of Columbia to the United States District Court for the District of Maryland, Southern Division.

3. I have been employed in AIP's Human Resources Department for 24 years. My current title is Vice President, Human Resources.

4. My primary residence is in Maryland.

5. AIP is a not-for-profit membership corporation, chartered in 1931. Its principal purpose is promoting the advancement of knowledge of physics. Its members are comprised of leading societies in the fields of physics and related sciences.

6. AIP publishes scientific journals, including the magazine *Physics Today*.

7. AIP's headquarter offices are located in College Park, Maryland.

8. Plaintiff Jeff Schmidt commenced employment with AIP on or about March 17, 1981. Plaintiff worked for *Physics Today* as an Associate Editor, then Senior Associate Editor. AIP terminated Plaintiff's at-will employment on or about June 2, 2000.

9. Plaintiff worked at AIP's campus in College Park, Maryland from October 1993 to the time he was discharged.¹

10. Steve Benka, Plaintiff's supervisor at the time of his discharge, worked in our office in College Park. Senior management participated in the decision to discharge Plaintiff; all work for AIP at its College Park campus.

11. Although Defendant maintains a small office in Washington, D.C., it is my understanding that Plaintiff never was assigned to (and never did) work out of that office.

12. It is AIP's understanding that Plaintiff resided in the District of Columbia while he was employed by AIP at its College Park location, and commuted from the District of Columbia to College Park, Maryland.

13. After he was discharged, Plaintiff filed an administrative complaint with Maryland's Prince George's County Commission on Human Relations. That administrative

¹ Defendant moved its headquarters from New York to Maryland in 1993. Prior to 1993, Plaintiff worked for AIP at its New York, New York location.

complaint is pending. It has been investigated extensively by the Prince George's County Commission.

14. As far as AIP is aware, Plaintiff has not filed a charge or complaint against AIP with any administrative agency located in the District of Columbia.

15. On or about July 22, 2003, Plaintiff served Defendant with a Summons and Complaint which was filed on or about May 30, 2003 in the Superior Court of the District of Columbia, Civil Division.

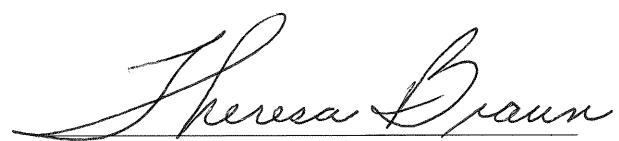
16. The action was removed to United States District Court, District of Columbia on or about August 8, 2003.

17. In his Complaint, Plaintiff asserts various wrongful discharge claims arising out of his employment with Defendant AIP.

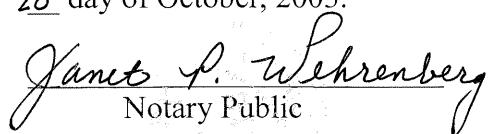
18. All of the "events" alleged in Plaintiff's Complaint (which AIP denies have any merit) occurred in College Park, Maryland, where Plaintiff was employed by Defendant.

19. All of the individuals who made decisions regarding Plaintiff's employment and discharge work at AIP's College Park, Maryland offices.

20. All of the records and documents pertaining to Plaintiff's employment with AIP are located at AIP's College Park, Maryland headquarters.


THERESA BRAUN

Sworn to before me this
20 day of October, 2003.


Notary Public
State of Maryland
County of Anne Arundel
Commission Expires 7/1/04

JANET P. WEHRENBERG
Notary Public, State of Maryland
County of Anne Arundel
Commission Expires 7/1/04

CERTIFICATE OF SERVICE

I hereby certify that, on this 22nd day of October, 2003, I caused a true and correct copy of the foregoing Affidavit of Theresa Braun to be served, via First-Class Mail, by depositing said copy into an official U.S. Postal Service depository addressed as follows:

JEFF SCHMIDT
PLAINTIFF PRO SE
3003 Van Ness Street, NW #W406
Washington, DC 20008



Teresa Burke Wright